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DEPARTMENT OF ENERGY
OFFICE OF HEARINGS AND APPEALS

Hearing Officer's Decision

Name of Case: Personnel Security Hearing

Date of Filing: February 2, 2007

Case Number: TSO-0468

This decision concerns the eligibility of XXXXXXXX (hereinafter referred to as "the Individual") to maintain an access authorization under the regulations set forth at 10 C.F.R. Part 710, entitled "Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material."¹ This decision considers whether, on the basis of the evidence in this proceeding, the Individual's access authorization should be restored.

I. BACKGROUND

The present case concerns an Individual who has been charged with being "a user of alcohol habitually to excess." The Individual does not dispute this charge. Instead, the Individual asserts that he has mitigated the security concerns raised by his habitual use of alcohol to excess.

On February 17, 2006, the Individual was arrested and charged with Driving Under the Influence (DUI) after he rear-ended a vehicle. A breathalyzer test administered to the Individual at the time of this arrest indicated that the Individual had a blood alcohol level of .248. DOE Exhibit 18. The February 17, 2006 DUI was not the Individual's first alcohol-related interaction with law enforcement officials. On two previous occasions, December 7, 2005 and May 10, 1998, the Individual had received citations for Public Intoxication (PI). On three previous occasions, October 9, 1996, May 10, 1996, and February 18, 1995, the Individual had received citations for being a Minor In Possession of Alcohol (MIP). Because of the security concerns raised by the Individual's DUI arrest and five alcohol-related citations, the Local Security Office (LSO)

¹ An access authorization is an administrative determination that an individual is eligible for access to classified matter or special nuclear material. 10 C.F.R. § 710.5. Such authorization will be referred to in this Decision as an access authorization or a security clearance.

conducted two personnel security interviews (PSI) of the Individual.² The first PSI was conducted on January 20, 2006 and appears in the record as DOE Exhibit 25. The second PSI was conducted on March 6, 2006 and appears in the record as DOE Exhibit 24. During the March 6th PSI, the Individual admitted that he had operated a motor vehicle while intoxicated on more than one occasion.³ DOE Exhibit 24 at 22.

The Individual's February 17, 2006 arrest for DUI, his five previous alcohol-related citations and his admission that he had operated a motor vehicle while intoxicated on more than one occasion raised significant security concerns that the LSO was unable to resolve in the Individual's favor. Accordingly, an administrative review proceeding was initiated. *See* 10 C.F.R. § 710.9. The LSO then issued a letter notifying the Individual that it possessed information that raised a substantial doubt concerning his eligibility for access authorization (the Notification Letter). The Notification Letter alleges that "the Individual has been, or is, a user of alcohol habitually to excess." 10 C.F.R. § 710.8(j) (Criterion J).

The Individual filed a request for a hearing. This request was forwarded to the Director of the Office of Hearings and Appeals (OHA), who appointed me as Hearing Officer. At the Hearing, the LSO presented no witnesses. The Individual presented seven witnesses: a close friend, two coworkers with whom the Individual socializes outside the workplace, his father, a fellow Alcoholics Anonymous (AA) participant, his present supervisor, and his substance abuse counselor (the Counselor). The Individual also testified on his own behalf.

II. STANDARD OF REVIEW

The Hearing Officer's role in this proceeding is to evaluate the evidence presented by the agency and the Individual, and to render a decision based on that evidence. *See* 10 C.F.R. § 710.27(a). The regulations state that "[t]he decision as to access authorization is a comprehensive, common-sense judgment, made after consideration of all the relevant information, favorable or unfavorable, as to whether the granting of access authorization would not endanger the common defense and security and would be clearly consistent with the national interest." 10 C.F.R. § 710.7(a). I have considered the following factors in rendering this opinion: the nature, extent, and seriousness of the conduct; the circumstances surrounding the conduct, including knowledgeable participation; the frequency and recency of the conduct; the Individual's age and maturity at the time of the conduct; the voluntariness of the Individual's participation; the absence or presence of rehabilitation or reformation and other pertinent behavioral changes; the motivation for the conduct, the potential for pressure, coercion, exploitation, or duress; the likelihood of continuation or recurrence; and other relevant and material factors. *See* 10 C.F.R.

² A third PSI of the Individual had been conducted on October 4, 2001.

³ The Statement of Charges, citing page 22 of the transcript of the March 6, 2006 PSI, asserts that the Individual admitted to operating a motor vehicle while intoxicated "more than a dozen times." Statement of Charges at 2. However, the transcript of the March 6, 2006 PSI does not support this conclusion. DOE Exhibit 24, at 22. Instead, the Transcript indicates that the Individual only admitted to operating a motor vehicle while intoxicated "probably more than once." DOE Exhibit 24 at 22.

§§ 710.7(c), 710.27(a). The discussion below reflects my application of these factors to the testimony and exhibits presented by both sides in this case.

III. FINDINGS OF LAW AND FACT

The Individual does not dispute the charge that he has been, or is, a user of alcohol habitually to excess. A finding of derogatory information does not, however, end the evaluation of evidence concerning the Individual's eligibility for access authorization. *See Personnel Security Hearing (Case No. VSO-0244)*, 27 DOE ¶ 82,797 (affirmed by OSA, 1999); *Personnel Security Hearing (Case No. VSO-0154)*, 26 DOE ¶ 82,794 (1997), *aff'd*, *Personnel Security Review (Case No. VSA-0154)*, 27 DOE ¶ 83,008 (affirmed by OSA, 1998). In the end, like all Hearing Officers, I must exercise my common-sense judgment in deciding whether the Individual's access authorization should be restored after considering the applicable factors prescribed in 10 C.F.R. § 710.7(c). Therefore, the issue before me is whether the Individual has submitted sufficient evidence of rehabilitation or reformation to resolve the security concerns raised by his alcohol use. After considering all of the evidence in the record, I find that he has.

The Individual clearly recognizes that he has a problem with alcohol and that he has been, or is, a user of alcohol habitually to excess. Transcript of Hearing (Tr.) at 91-92. In fact, the Individual attributes his excessive alcohol use to his being afflicted with Alcohol Abuse. In order to address his Alcohol Abuse, the Individual has abstained from using alcohol since February 18, 2006, the day after he was arrested for DUI. As a result, at the time of the hearing, the Individual had abstained from using alcohol for 14 months. Tr. at 99. On March 8, 2006, he met with the Counselor for a drug and alcohol abuse assessment. Tr. at 107. As a result of that assessment, the Counselor diagnosed the Individual with Alcohol Abuse. Tr. at 107. The Counselor recommended that the Individual abstain from using alcohol, enter an intensive outpatient treatment program (IOP) for substance abuse, undergo one-on-one counseling, attend Alcoholics Anonymous meetings, work the AA Twelve-Step program, obtain an AA Sponsor, and participate in an aftercare program. Individual's Exhibit 2; Tr. at 108-114. With one exception, the Individual complied with each of the Counselor's recommendations. The Individual has not obtained a sponsor in the AA program. Tr. 86, 114-115.

The Individual convincingly testified that he has abstained from using alcohol since February 18, 2006, 14 months prior to the date of the hearing. Tr. at 99. Moreover, each of the friends and coworkers who testified at the hearing noted that prior to the Individual's decision to abstain from alcohol use, they had observed him using alcohol in social functions, but since the Individual's DUI, they had observed that the Individual refrained from using alcohol. Tr. at 21-25, 36, 39-41, 47, 50, 53. Most importantly, the Individual's father testified on the Individual's behalf. The Individual father testified that he is a recovering alcoholic. Tr. at 56. At the time of the hearing, the Individual's father has been a houseguest of the Individual for 15 months. Tr. at 56-57. The Individual's father testified that he has not observed any sign that the Individual has used alcohol since his claimed sobriety date. Tr. at 60-62. The Individual has also submitted the results of nine random drug and alcohol screenings administered by his employer. Individual's Exhibit 11. These results are uniformly negative for drug and alcohol use. *Id.* I am therefore

convinced that, at the time of the hearing, the Individual had not used alcohol since February 18, 2006.

The Individual attended the IOP and successfully completed the program. Individual's Exhibit 6. The IOP met 3 nights a week for five weeks and provided the Individual with education about his disorder, a support group, and twelve-step programming. Tr. at 108. The counselor testified that she had received positive feedback from the IOP indicating that the Individual was doing well in that program. Specifically, the Counselor testified: "The opinion - - was really quite positive. They- - the feedback that I got from the treatment team in IOP was- - was very good, that he was not only well motivated, but that he attended, that he participated actively, and that in - - drug and alcohol lingo, he not only talked the talk but seemed to be walking the walk." Tr. at 109.

After completing the IOP, the Individual began attending a weekly aftercare program run by the IOP. The aftercare program was a therapeutic support group that serves as a adjunct to AA . Tr. at 110. The Counselor testified that the Individual attended the aftercare meetings on a regular basis and that "his participation is active, appears to be genuine, well motivated. He's an asset to the group." Tr. at 110. The Individual has also been attending AA meetings on a twice weekly basis. Tr. at 76, 85. The Individual has submitted sign-in sheets indicating that he has attended at least 136 AA and aftercare meeting during the period beginning on June 29, 2006 and continuing through April 9, 2007. Individual's Exhibit 5. A coworker also testified that he had observed the Individual at AA meetings on a weekly basis. Tr. at .13-14. The Individual has also testified that he is working the AA Twelve-Step program and is currently working on Step 4. Tr. at 95.

The Individual entered into one-on-one counseling with the Counselor on March 8, 2006, less than a month after his arrest for DUI.⁴ Tr. at 107. On that date, the Counselor conducted a clinical interview of the Individual and administered a substance abuse screening inventory to the Individual. Tr. at 107. As a result of her evaluation of the Individual, the Counselor determined that the Individual met the criteria for Alcohol Abuse. Tr. at 107. The Counselor began providing individual counseling sessions to the Individual and continued to monitor the Individual's progress in the IOP, aftercare and AA programs. Tr. at 109. The Counselor testified that Individual complied with her recommendations and, as she testified, "did so with what appeared to be good motivation." Tr. at 108. The Counselor noted that she believed the Individual had developed the coping skills he needs to avoid further alcohol use. Tr. at 112. The Counselor testified that she was very pleased with the Individual's progress and that as a result she was of the opinion that his prognosis was "very good." Tr. at 114. The Counselor further testified that the individual understood that he could not continue to use alcohol. Tr. at 109. The Counselor initially recommended that that Individual obtain an AA Sponsor. The Individual has not done so. However, the Counselor testified that she is not concerned by the Individual's lack of a sponsor, noting that the Individual had instead chosen to rely on a group of AA members to help him work the program. Tr. at 115-116. The record also shows that the Individual has also

⁴ The Counselor has a Masters Degrees in Psychology and Addiction Counseling, a Licensed Professional Counseling Degree, and is a Licensed Chemical Dependency Counselor. Tr. at 106.

undergone a DUI Education Program and has participated in a Mothers Against Drunk Driving Victims' Impact Panel.

I note that the Revised Adjudicative Guidelines for Determining Eligibility for Access to Classified Information (the Revised Guidelines), issued on December 29, 2005 by Stephen J. Hadley, the Assistant to the President for National Security Affairs set forth four conditions that could mitigate security concerns arising from Alcohol Abuse of Dependence. Among those conditions set forth in the Revised guidelines are the following,

- (b) the individual acknowledges his or her alcoholism or issues of alcohol abuse, provides evidence of actions taken to overcome this problem, and has established a pattern of abstinence (if alcohol dependant) or responsible use (if an alcohol abuser);
- (c) the individual is a current employee who is participating in a counseling or treatment program, has no history of previous treatment and relapse, and is making satisfactory progress
- (d) the individual has successfully completed inpatient or outpatient counseling or rehabilitation along with any required aftercare, has demonstrated a clear and established pattern of modified consumption or abstinence in accordance with treatment recommendations, such as participation in meetings of Alcoholics Anonymous or a similar organization and has received a favorable prognosis by a duly qualified medical professional or a licensed clinical social worker who is a staff member of a recognized alcohol treatment program.

Revised Guidelines at 11. Each of these conditions set forth in the Revised Guidelines strongly support a conclusion that the Individual has fully mitigated the security concerns raised by his habitual excess alcohol use.

The factors set forth above have convinced me that the Individual is determined to maintain his sobriety and has taken the steps he needed to achieve that sobriety. Individual's Exhibits 8 and 9. I am therefore convinced that the Individual has resolved the security concerns raised by his habitual excessive alcohol use.

IV. CONCLUSION

For the reasons set forth above, I conclude that the Individual has resolved the security concerns raised under Criteria J. Therefore, the Individual has demonstrated that restoring his security clearance would not endanger the common defense and would be clearly consistent with the national interest. Accordingly, it is my opinion that the Individual's access authorization should be restored at this time. The Local Security Office may seek review of this Decision by an Appeal Panel under the procedures set forth at 10 C.F.R. § 710.28.

Steven L. Fine
Hearing Officer
Office of Hearings and Appeals

Date: June 12, 2007